[Record, pp. 581-82]

ORDER

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 4, held at its office in Washington, D. C., on the 5th day of June, A. D. 1945

F. D. No. 14692

CHESAPEAKE & OHIO RAILWAY COMPANY PURCHASE, ETC.

No. 29085

IN RE ALLEGHANY CORPORATION CONTROL

Investigation of the matters and things involved in these proceedings having been made, hearings having been held, and said Division having on the date hereof made and filed a report containing its findings of fact and conclusions thereon, which report is hereby referred to and made a part hereof:

It is ordered, That purchase by The Chesapeake and Ohio Railway Company of the properties of the Norfolk Terminal & Transportation Company, upon the terms and conditions in said report found just and reasonable, be, and it is hereby, approved and authorized: *Provided, however,* and this authorization and approval are granted upon the express condition, that before recording the acquisition of said properties in its books said Chesapeake and Ohio Railway Company shall first submit the related journal entries for approval by this Commission.

It is further ordered, That The Chesapeake and Ohio Railway Company shall report to this Commission as required by valuation order No. 24, effective May 15, 1928.

It is further ordered, That, for the purpose set forth in the application and aforesaid report, The Chesapeake and Ohio Railway Company be, and it is hereby, authorized to assume obligation and liability, as primary obligor, in respect of not exceeding $500,000 of Norfolk Terminal & Transportation Company first mortgage five percent bonds; and that, within 10 days after the execution of the supplemental indenture whereby said obligation and liability is assumed, a certified copy thereof shall be filed with this Commission by The Chesapeake and Ohio Railway Company.

It is further ordered, That The Chesapeake and Ohio Railway Company shall report concerning the matters involved in the foregoing paragraph of this order in conformity with the order of the Commission, by Division 4, dated February 19, 1927, respecting applications filed under Section 20a of the Interstate Commerce Act.

It is further ordered, That nothing herein shall be construed to imply any guaranty or obligation as to said bonds, or interest thereon, on the part of the United States.

It is further ordered, That acquisition by the Alleghany Corporation of control, through ownership of stock, of The Chesapeake and Ohio Railway Company, The New York, Chicago and St. Louis Railroad Company, and the Pere Marquette Railway Company, and their subsidiaries and affiliates, be, and it is hereby, approved and authorized: *Provided, however,* that this authorization and approval are granted subject to the express conditions numbered (1), (2), and (3), relative to the depositing of stocks with independent voting trustees and to the elimination of interlocking directors, set forth in said report.

It is further ordered, That the trust agreements in the form submitted with the Alleghany Corporation's petition

filed April 13, 1945, and the trustees nominated therein be, and they are hereby, approved.

It is further ordered, That within 10 days after execution of said trust agreements, said Alleghany Corporation and said The Chesapeake and Ohio Railway Company shall file with this Commission verified copies of said agreements in the form in which they were executed.

It is further ordered, That the Alleghany Corporation shall report to this Commission quarterly beginning with July 1, 1945, any changes in matters covered by said trust agreements.

It is further ordered, That unless and until otherwise ordered by this Commission said Alleghany Corporation shall be considered as a carrier subject to the provisions of Section 20(1) to (10), inclusive, and Section 20a(2) to (11), inclusive, of the Interstate Commerce Act to the same extent that those provisions are applicable to The Chesapeake and Ohio Railway Company and its carrier subsidiaries and affiliates; *Provided,* that as to the applicability of said provisions of Section 20 and Section 20a to said Alleghany Corporation this order shall take effect and be in force on and after the date hereof, except that as to the provisions of Section 20 pertaining to annual reports, it shall be deemed effective as of January 1, 1945.

And it is further ordered, That the proceeding in No. 29085, *In Re Alleghany Corporation Control,* be, and it is hereby, discontinued.

By the Commission, Division 4.

(SEAL)

W. P. BARTEL,
Secretary.

[Record, p. 588]

UNITED STATES OF AMERICA

BEFORE THE SECURITIES AND EXCHANGE COMMISSION

At a regular session of the Securities and Exchange Commission, held at its office in the City of Philadelphia, Pa., on the 4th day of October, A. D., 1945.

In the Matter of ALLEGHANY CORPORATION File No. 811-338 Investment Company Act of 1940—Sections 3 (c) (9) and 8 (f)	ORDER

Alleghany Corporation, a registered investment company, having filed an application pursuant to Section 8 (f) of the Investment Company Act of 1940 for an order declaring that it has ceased to be an investment company within the meaning of said Act;

A public hearing having been duly held, after appropriate notice, and the Commission having this day issued its Findings and Opinion in the matter;

IT IS HEREBY DECLARED that Alleghany Corporation has ceased to be and is not now an investment company within the meaning of the Investment Company Act of 1940; and

IT IS ORDERED that the registration of Alleghany Corporation under the Investment Company Act of 1940 shall forthwith cease to be in effect, *provided, however,* that if in the future Alleghany Corporation ceases to be subject to regulation under the Interstate Commerce Act as set forth in such Findings and Opinion, this order may be revoked, suspended or modified after appropriate notice and opportunity for hearing.

By the Commission.

ORVAL L. DUBOIS,
Secretary.

(SEAL)

[Record, p. 587]

[EMBLEM]

UNITED STATES OF AMERICA
SECURITIES AND EXCHANGE COMMISSION

ATTESTATION

I HEREBY ATTEST that attached is a full, true and complete copy of:

Order of this Commission dated October 4, 1945, in the matter of Alleghany Corporation, File No. 811-338, Investment Company Act of 1940 Sections 3(c)(9) and 8(f).

I further attest that between October 4, 1945 and December 9, 1955 the aforesaid order was not revoked, suspended or modified.

on file in this Commission

October 15, 1963
(Date)

/S/ ERNEST L. DESSECKER
ERNEST L. DESSECKER
RECORDS & SERVICE OFFICER

It is hereby certified that ERNEST L. DESSECKER, Records Officer of the Securities and Exchange Commission, Washington, D.C., which Commission was created by the Securities Exchange Act of 1934 (15 USCA Sec. 78a et seq.), is official custodian of the books and records of said Commission, and all books and records created or established by the Federal Trade Commission

pursuant to the provisions of the Securities Act of 1933 and transferred to this Commission in accordance with Section 210 of the Securities Exchange Act of 1934, and was such official custodian at the time of executing the above attestation, and that NANCY H. MATTILA is his deputy.

By the Commission

/s/ ORVAL L. DUBOIS
Secretary

(SEAL)

[Record, pp. 583-84]

ORDER

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 4, held at its office in Washington, D. C., on the 2d day of March, A. D. 1955.

Finance Docket No. 18656

LOUISVILLE & JEFFERSONVILLE BRIDGE AND RAILROAD COMPANY, MERGER, ETC.

Finance Docket No. 14692

CHESAPEAKE & OHIO RAILWAY COMPANY PURCHASE, ETC.

Investigation of the matters and things involved in these proceedings having been made, and said division, on the date hereof, having made and filed a report containing its findings of fact and conclusions thereon, which report is hereby referred to and made a part hereof:

It is ordered, That, subject to the conditions for the protection of employees, and relating to deposit of specified railroad securities with an independent voting trustee referred to in the report aforesaid, (a) merger of the properties and franchises of the Louisville & Jeffersonville Bridge and Railroad Company into the Cleveland, Cincinnati, Chicago and St. Louis Railway Company for ownership, management, and operation, and through the ownership of stock of the latter company, continuation of control of the properties and franchises of the former company by The New York Central Railroad Company and the Alleghany

Corporation; and (b) modification of the lease of January 2, 1930, under which The New York Central Railroad Company, lessee, operates the property of the Cleveland, Cincinnati, Chicago and St. Louis Railway Company, lessor, to give effect to the merger described in (a) above, upon the terms and conditions in said report found just and reasonable, be, and they are hereby, approved and authorized.

It is further ordered, That unless and until otherwise ordered by this Commission, said Alleghany Corporation shall be considered as a carrier subject to the provisions of section 20 (1) to (10), inclusive, and section 20a (2) to (11), inclusive, of the Interstate Commerce Act, as amended, to the same extent that those provisions are applicable to The New York Central Railroad Company and its carrier subsidiaries and affiliates; *Provided,* that, as to the applicability of said provisions of section 20 and section 20(a) to said Alleghany Corporation, this order shall take effect and be in force on and after the date hereof, except that as to the provisions of section 20, pertaining to annual reports, it shall be deemed effective as of January 1, 1955.

It is further ordered, That the effective portions of the order of June 5, 1945, in Finance Docket No. 14692, Chesapeake & Ohio Railway Company Purchase, etc., be and they are hereby terminated and shall be of no further force and effect.

It is further ordered, That the jurisdiction of this Commission be, and it is hereby retained for the purpose of making such further order or orders herein as hereafter may be necessary or appropriate.

It is further ordered, That the Cleveland, Cincinnati, Chicago and St. Louis Railway Company shall report to this Commission as required by valuation order No. 24, effective May 15, 1928.

It is further ordered, That, if the authority herein granted is exercised, the Cleveland, Cincinnati, Chicago and St. Louis Railway Company shall submit for the consideration and approval of this Commission, three copies of the journal entries required to record the transactions authorized herein.

And it is further ordered, That within 15 days after the execution of the agreements of merger and the confirmatory supplemental lease set forth in the report aforesaid, the Cleveland, Cincinnati, Chicago and St. Louis Railway Company and The New York Central Railroad Company, respectively shall file verified copies thereof with this Commission.

By the Commission, division 4.

HAROLD D. McCOY,
Secretary.

A true copy:

/s/ HAROLD D. McCOY
SECRETARY OF THE INTERSTATE
COMMERCE COMMISSION

(SEAL)

[Record, pp. 585-86]

ORDER

At a General Session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 24th day of May A. D. 1955.

Finance Docket No. 18656

Louisville & Jeffersonville Bridge and Railroad Company Merger, Etc.

Finance Docket No. 14692

Chesapeake & Ohio Railway Company Purchase, Etc.

It appearing, That the Commission, by division 4, by its report and order of March 2, 1955, in the above-entitled proceedings approved and authorized the merger of the properties of the Louisville & Jeffersonville Bridge and Railroad Company into the Cleveland, Cincinnati, Chicago & St. Louis Railway Company for ownership, management, and operation, and through that company, continued control of the said properties and franchises by The New York Central Railroad Company and the Alleghany Corporation, and the modification of a lease of January 2, 1930, between the Cleveland, Cincinnati, Chicago & St. Louis Railway Company and The New York Central Railroad Company respecting operation of the properties of the former; subjected the Alleghany Corporation to the provisions of section 20(1) to (10), inclusive, and section 20a(2) to (11), inclusive, of the Interstate Commerce Act; terminated the effective portions of the order of June 5, 1945, in Finance

Docket No. 14692; and retained jurisdiction to make such further order or orders as may be necessary or appropriate.

It further appearing, That on April 1, 1955, the United States Securities and Exchange Commission filed a petition for reconsideration and reversal of the division insofar as it holds the Alleghany Corporation to continue to be a carrier subject to provisions of the act under section 5(3); that on March 21, 1955, a joint petition for rehearing and reconsideration was filed by Lewis D. Gilbert and John Gilbert and Breswick & Company, against orders of division 4, dated February 9 and 15, and March 2, 1955, denying and dismissing previously filed petitions for leave to intervene in these proceedings; that on March 28, 1955, Randolph Phillips, *pro se,* filed a petition for leave to intervene and to join in the petition of the Gilberts; and that on April 11, 1955, a joint amended petition for leave to intervene and for reconsideration was filed by the Gilberts, Breswick & Company, and Phillips.

It further appearing, That the New York Central Railroad Company and the Alleghany Corporation filed replies to the petition of the Securities and Exchange Commission; and Alleghany Corporation filed replies to each petition filed by the Gilberts, Breswick & Company, and Phillips.

It is ordered, That the petition of the Securities and Exchange Commission to the extent it requests reconsideration be, and it is hereby, granted.

It is ordered, That said Lewis D. Gilbert, John Gilbert, Breswick & Co., and Randolph Phillips be, and they are hereby, permitted to intervene in the above-entitled proceedings and be treated as parties thereto as of the date hereof, and their petitions, so far as they request reconsideration be, and they are hereby granted, and their request for hearing be, and it is hereby, denied;

And it further appearing, Upon consideration of the record herein and the contentions set forth in said petitions and replies, that this Commission, on the date hereof, made and filed a report on reconsideration containing its findings of fact and conclusions thereon, which report is hereby referred to and made a part hereof.

It is ordered, That the order dated March 2, 1955, described in the first paragraph hereof, be and it is hereby, affirmed;

And it is further ordered, That the jurisdiction of this Commission be, and it is hereby, retained for the purpose of making such further order or orders herein as hereafter may be necessary or appropriate.

By the Commission.

HAROLD D. McCOY,
Secretary.

(SEAL)

Office-Supreme Court, U.S.
FILED
SEP 9 1966
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

October Term—1966

No. 441

SANDOR SCHWARTZ,

Petitioner,

against

CYRUS S. EATON, WALTER J. TUOHY, CYRUS S. EATON, JR., CLINTON W. MURCHISON and ANITA O'KEEFFE YOUNG, as Executrix of the Estate of Robert R. Young, Deceased,

Respondents.

ROBERT BOWMAN, ROBERT J. BULKLEY, HERBERT FITZPATRICK, ALLAN P. KIRBY, WILLIAM H. LIPSCOMB, HARRY C. THOMPSON, THOMAS J. DEEGAN, JR., BARNUM L. COLTON, ROGER H. FERGER, MARTIN S. FOTHERINGHAM, FAY A. LEFEVRE, SIDNEY W. RICHARDSON, ALLEGHANY CORPORATION and THE CHESAPEAKE & OHIO RAILWAY CO.,

Defendants.

BRIEF OF RESPONDENT CLINTON W. MURCHISON IN OPPOSITION

F. W. H. ADAMS,
Attorney for Respondent Clinton W. Murchison,
277 Park Avenue,
New York, N. Y. 10017.

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Defendants.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF OF RESPONDENT CLINTON W. MURCHISON IN OPPOSITION

To The Justices of the Supreme Court of the United States:

To avoid unnecessary duplication respondent, Clinton W. Murchison, adopts the brief submitted on behalf of

respondents Cyrus S. Eaton, Walter J. Tuohy and Cyrus S. Eaton, Jr., in opposition to the petition for writ of certiorari.

In addition, and in order to preclude any possible claim of waiver, respondent Murchison also asserts (1) jurisdiction was not obtained over him by extraterritorial service of process under the provisions of the Investment Company Act of 1940, 15 U. S. C. §80a-43 (the Act) for the reasons that he was not subject to the Act and no alleged liability or duty as to him was created by the Act and the complaint in this action does not seek to enforce any such liability or duty as to him; (2) the extraterritorial service of process upon him could not and did not confer jurisdiction over him as to any non-federal claims alleged in the complaint regardless of whether or not a claim under the Act is alleged against him.

Respectfully submitted,

F. W. H. Adams,
Attorney for Respondent Clinton W. Murchison,
Office and P. O. Address,
277 Park Avenue,
New York, N. Y. 10017.